

# In the Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES OF AMERICA, APPELLANT

v.

SHAWN D. EICHMAN, ET AL.

UNITED STATES OF AMERICA, APPELLANT

v.

MARK JOHN HAGGERTY, ET AL.

*ON APPEALS FROM THE UNITED STATES DISTRICT COURTS  
FOR THE DISTRICT OF COLUMBIA AND THE WESTERN DISTRICT  
OF WASHINGTON*

## JOINT APPENDIX

WILLIAM M. KUNSTLER  
13 Gay Street  
New York, NY 10014  
(212) 924-5661

*Counsel of record for  
appellees Eichman, et al.*

DAVID D. COLE  
Center for Constitutional Rights  
666 Broadway – 7th Floor  
New York, NY 10012  
(212) 614-6464

*Counsel of record for  
appellees Haggerty, et al.*

KENNETH W. STARR  
Solicitor General  
Department of Justice  
Washington, D.C. 20530  
(202) 633-2217

*Counsel for appellant*

Jurisdictional Statement in No. 89-1433 filed March 13, 1990  
Jurisdictional Statement in No. 89-1434 filed March 13, 1990  
Probable Jurisdiction Noted March 30, 1990

88 pp  
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# In the Supreme Court of the United States

OCTOBER TERM, 1989

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No. 89-1433

UNITED STATES OF AMERICA, APPELLANT

v.

SHAWN D. EICHMAN, ET AL.

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No. 89-1434

UNITED STATES OF AMERICA, APPELLANT

v.

MARK JOHN HAGGERTY, ET AL.

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*ON APPEALS FROM THE UNITED STATES DISTRICT COURTS  
FOR THE DISTRICT OF COLUMBIA AND THE WESTERN DISTRICT  
OF WASHINGTON*

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## JOINT APPENDIX

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-0419

UNITED STATES OF AMERICA

v.

SHAWN D. EICHMAN

## DOCKET ENTRIES

DATE	NR	PROCEEDINGS
1989		
Oct. 31	1	Filed information (Dkt'd 11/07/89). Cases assigned to JUDGE JUNE L. GREEN (Dkt'd 11/07/89).—Category A (Dkt'd 11/07/89).
Oct. 31	2	Order defendant released on personal recognizance with conditions (MAG- ISTRATE ROBINSON) (Dkt'd 11/07/89). US Attorney ISCOE, CRAIG added to case (Dkt'd 11/07/89).
Nov. 2	4	Arraignment and plea set for 11/06/89 (Count 1) (Dkt'd 12/13/89).
Nov. 5	5	Arraignment held (Count 1) (deft's mo- tion due 12-14-89, govt's response due 1-12-90, deft's reply due 1-17-90, deft pers. recog. (REP: G. Slodysko)) (JUDGE JUNE L. GREEN) (Dkt'd 12/14/90). Defendant's first appearance (Dkt'd 12/14/89).

DATE	NR	PROCEEDINGS
		Defendant appears with counsel (Dkt'd 12/14/89).
		Defendant enters plea of not guilty (Count 1) (Dkt'd 12/14/89).
Nov. 7	6	Order filed (directing all pretrial motions be filed by 12-14-89, gov'ts response due 1-12-90, defts reply due 1-17-90 (N) (signed 11-6-89)) (JUDGE JUNE L. GREEN) (Dkt'd 12/14/89).
Nov. 13	7	Order filed (directing that all pretrial motions by deft be filed by 12-4-89, govt's response due by 1-12-90, deft's reply due by 1-17-90 (N)) (JUDGE JUNE L. GREEN) (Dkt'd 12/19/89).
Nov. 28	8	Order filed (granting motion of deft. to extend time to file pretrial motions. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 01/10/90).
Nov. 28	9	Motion for extension of time to file pretrial motions filed (MOT#1) (Count 1) (Dkt'd 01/10/90).
Nov. 28	10	Motion for extension of time to file pretrial motions granted (MOT#1) (JUDGE JUNE L. GREEN) (Dkt'd 01/10/90).
Dec. 5	11	Appearance of COLE, DAVID as co-counsel for defendant (Dkt'd 01/16/90).
Dec. 5	12	Motion to dismiss filed (MOT#2) (Count 1) (by deft. Supporting Memo. Addenda A-G and Exhibits 1-5.) (Dkt'd 01/16/90).

DATE	NR	PROCEEDINGS
Dec. 5	13	Mark the beginning of a potential excludable period of type X-E starting on 12/05/89 ((In re MOTFDC#2 on 12/5/89)) (Dkt'd 01/16/90).
		1990
Jan. 12	14	Notice filed (Notice of Appearance of the U.S. Senate as amicus curiae with Memorandum of U.S. Senate as Amicus Curiae in support of Constitutionality of the Flag Protection Act of 1989.) (Dkt'd 02/13/90).
Jan. 12	15	Motion filed (MOT#3) (of the Speaker and Leadership Group of the House of Representatives to appear as Amicic Curiae, with Memorandum of the Speaker and Leadership Group of the U.S. House of Representatives in opposition to deft.'s Motion to Dismiss. Exhibits 1-27.) (Dkt'd 02/13/90).
Jan. 12	16	Memorandum in opposition to motion to dismiss (MOT#2) (by govt., with Attachments A & B.) (Dkt'd 02/13/90).
Jan. 12	17	Motion filed (MOT#4) (by deft. for extension of time to file reply memo.) (Dkt'd 02/13/90).
Jan. 12	18	Mark the beginning of a potential excludable period of type X-E starting on 01/12/90 ((In re MOTFOD#4 on 1/12/90)) (Dkt'd 02/13/90).

DATE	NR	PROCEEDINGS
Jan. 16	19	Order filed (granting deft.'s motion for extension of time within which to file reply motion. Pretrial motions to be filed no later than 1/23/90. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 16	20	Motion granted (MOT#4) for deft. for extension of time to file reply memo.) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 16	21	Excludable delay due to hearings on Pretrial Motions began on 01/12/90 and ended on 01/16/90 (Dkt'd 02/13/90).
Jan. 17	22	Order filed (granting motion of the Speaker and Leadership Group of the U.S. House of Representatives to appear a[s] amici curiae. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 17	23	Motion granted (MOT#3) (to appear amici curiae.) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 17	24	Memorandum in Opposition to motion to dismiss (MOT#2) (by the Speaker and Leadership Group of the U.S. House of Representatives.) (Dkt'd 02/13/90).
Jan. 23	25	Memorandum in support of motion to dismiss (MOT#2) (Defts reply memorandum in support of motion to dismiss) (Dkt'd 02/20/90).

DATE	NR	PROCEEDINGS
Jan. 23	26	Motion filed (MOT#5) (for oral argument regarding the constitutionality of the flag protection act of 1989) (Dkt'd 02/20/90).
Feb. 1	27	Status hearing held (status.) (Dkt'd 02/22/90).
Feb. 1	28	Status hearing set for 02/22/90 @ 1:30 PM (for oral argument. Deft. not present. (REP: Carrie Gansle)) (JUDGE JUNE L. GREEN) (Dkt'd 02/22/90).
Feb. 5	29	Order filed (setting oral argument on 2/22/90 at 1:30 pm., directing deft. to be present. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/27/90).
Feb. 22	30	Status hearing held (Motion by dft. to dismiss heard and taken under advisement. (REP: Kay Moomey (Miller))) (JUDGE JUNE L. GREEN) (Dkt'd 03/16/90).
Feb. 22	31	Motion to dismiss taken under advisement (MOT#2) (JUDGE JUNE L. GREEN) (Dkt'd 03/16/90).
Feb. 22	32	Mark the beginning of a potential excludable period of type X-G starting on 02/22/90 and not to extend beyond 03/23/90 ((In re MOTADVADC#2 on 2/22/90)) (Dkt'd 03/16/90).
Mar. 5	33	OPINION. (N) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90). Order filed (granting deft.'s motion to dismiss. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).

<b>DATE</b>	<b>NR</b>	<b>PROCEEDINGS</b>
Mar. 5	34	Dismissed (Count 1) (Order granting deft.s motion to dismiss.) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	35	Motion to dismiss granted (MOT#2) (of deft.) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	36	Excludable delay due to hearings on Pre-trial Motions began on 12/05/89 and ended on 03/05/90 (Dkt'd 03/23/90).
Mar. 5	37	Excludable delay while defendant motion under advisement, began on 02/22/90 and ended on 03/05/90 (Dkt'd 03/23/90).
Mar. 6	38	Filed transcript of proceedings for 02/22/90 (Pages 1-56. (REP: Katherine K. Moomey, Miller Reporting Co.)) (Dkt'd 03/23/90).
Mar. 6	39	Filed notice of appeal to Supreme Court (Count 1) (APPL#1) (by govt., from the orders of USDC filed on 3/5/90 dismissing the criminal information filed in this matter.) (Dkt'd 03/23/90).
Mar. 17	40	(APPL#1) (Receipt of Notice of Filing Appeal, from Office of the Clerk, Supreme Court of the U.S., dated 3/13/90, No. 89-1433, October Term, 1989.) (Dkt'd 03/23/90).

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Criminal No. 89-0420**

**UNITED STATES OF AMERICA**

**v.**

**DAVID GERALD BLALOCK**

**DOCKET ENTRIES**

<b>DATE</b>	<b>NR</b>	<b>PROCEEDINGS</b>
1989		
Oct. 31	1	Filed information (Dkt'd 11/07/89). Cases assigned to JUDGE JUNE L. GREEN (Dkt'd 11/07/89). - Category A (Dkt'd 11/07/89).
Oct. 31	2	Order defendant released on personal recognizance with conditions (MAGISTRATE ROBINSON) (Dkt'd 11/07/89).
Oct. 31	3	Appearance of attorney K[UN]STLER, WILLIAM (Dkt'd 11/07/89) US Attorney ISCOE, CRAIG added to case (Dkt'd 11/07/89).
Nov. 2	4	Arraignment and plea set for 11/06/89 (Count 1) (Dkt'd 12/13/89).
Nov. 5	5	Arraignment held (Count 1) (deft's motion due 12-14-89, govt's response due 1-12-90, deft's reply due 1-17-90, deft pers. recog. (REP: G. Slodysko))

DATE	NR	PROCEEDINGS
		(JUDGE JUNE L. GREEN) (Dkt'd 12/14/90).
		Defendant's first appearance (Dkt'd 12/14/89).
		Defendant appears with counsel (Dkt'd 12/14/89).
		Defendant enters plea of not guilty (Count 1) (Dkt'd 12/14/89).
Nov. 7	6	Order filed (directing all pretrial motions be filed by 12-14-89, govt's response due 1-12-90, defts reply due 1-17-90 (N) (signed 11-6-89)) (JUDGE JUNE L. GREEN) (Dkt'd 12/14/89).
Nov. 13	7	Order filed (directing that all pretrial motions by deft be filed by 12-4-89, govt's response due by 1-12-90, deft's reply due by 1-17-90 (N)) (JUDGE JUNE L. GREEN) (Dkt'd 12/19/89).
Nov. 28	8	Order filed (granting motion of deft to extend time to file pretrial motions. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 01/10/90).
Nov. 28	9	Motion for extension of time to file pretrial motions filed (MOT#1) (Count 1) (Dkt'd 01/10/90).
Nov. 28	10	Motion for extension of time to file pretrial motions granted (MOT#1) (JUDGE JUNE L. GREEN) (Dkt'd 01/10/90).
Dec. 5	11	Appearance of COLE, DAVID as co-counsel for defendant (Dkt'd 01/16/90).

DATE	NR	PROCEEDINGS
Dec. 5	12	Motion to dismiss filed (MOT#2) (Count 1) (by deft. Supporting Memo. Addenda A-G and Exhibits 1-5.) (Dkt'd 01/16/90).
Dec. 5	13	Mark the beginning of a potential excludable period of type X-E starting on 12/05/89 ((In re MOTFDC#2 on 12/5/89)) (Dkt'd 01/16/90).
1990		
Jan. 12	14	Notice filed (MOT#3) (by deft. for extension of time to file reply motion.) (Dkt'd 02/13/90).
Jan. 12	15	Mark the beginning of a potential excludable period of type X-E starting on 01/12/90 ((In re MOTFOD#3 on 1/12/90)) (Dkt'd 02/13/90).
Jan. 12	16	Motion filed (MOT#4) (by the Speaker and Leadership Group of the House of Representatives to appear as Amici Curiae. (EXHIBIT: Memo in opposition to deft.'s motion to dismiss, with Exhibits 1-27)) (Dkt'd 02/13/90).
Jan. 12	17	Mark the beginning excludable period of type X-E starting on 01/12/90 ((In re MOTFOD#4 on 1/12/90)) (Dkt'd 02/13/90).
Jan. 12	18	Notice filed (of appearance of the U.S. Senate as amicus curiae, with Memorandum as amicus curiae, in support of constitutionality of the Flag Protection Act of 1989.) (Dkt'd 02/13/90).

DATE	NR	PROCEEDINGS
Jan. 12	19	Memorandum in opposition to motion to dismiss (MOT#2) (by govt., with Attachments A and B.) (Dkt'd 02/13/90).
Jan. 16	20	Order filed (granting def't.'s motion for extension of time within which to file reply motion. Pretrial motions to be filed no later than 1/23/90. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 16	21	Motion granted (MOT#3) for def't. for extension of time to file reply memo.) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 16	22	Excludable delay due to hearings on Pretrial Motions began on 01/12/90 and ended on 01/16/90 (Dkt'd 02/13/90).
Jan. 17	23	Order filed (granting motion of the Speaker and Leadership Group of the U.S. House of Representatives to appear as amici curiae. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 17	24	Motion granted (MOT#4) (to appear amici curiae.) (JUDGE JUNE L. GREEN) (Dkt'd 02/13/90).
Jan. 17	25	Memorandum in Opposition to motion to dismiss (MOT#2) (by the Speaker and Leadership Group of the U.S. House of Representatives.) (Dkt'd 02/13/90).

DATE	NR	PROCEEDINGS
Jan. 17	26	Excludable delay due to hearings on Pretrial Motions began on 01/12/90 and ended on 01/17/90 (Dkt'd 02/13/90).
Jan. 23	27	Memorandum in support of motion to dismiss (MOT#2) (Defts reply memorandum in support of motion to dismiss) (Dkt'd 02/20/90).
Jan. 23	28	Motion filed (MOT#5) (for oral argument regarding the constitutionality of the flag protection act of 1989) (Dkt'd 02/20/90).
Feb. 1	29	Status hearing held (status.) (Dkt'd 02/22/90).
Feb. 1	30	Status hearing set for 02/22/90 @ 1:30 PM (for oral argument. Deft. not present. (REP: Carrie Gansle)) (JUDGE JUNE L. GREEN) (Dkt'd 02/22/90).
Feb. 5	31	Order filed (setting oral argument on 2/22/90 at 1:30 pm., directing def't. to be present. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/27/90).
Feb. 22	32	Status hearing held (Oral Motion attorney Nina Kraut for admission, pro hac vice of David Cole as counsel for dft Blalock, heard and granted. Motion by dft to dismiss heard and taken under advisement. (REP: Kay Moomey (Miller))) (JUDGE JUNE L. GREEN) (Dkt'd 03/16/90).

DATE	NR	PROCEEDINGS
Feb. 22	33	Motion to dismiss taken under advisement (MOT#2) (JUDGE JUNE L. GREEN) (Dkt'd 03/16/90).
Feb. 22	34	Mark the beginning of a potential excludable period of type X-G starting on 02/22/90 and not to extend beyond 03/23/90 ((In re MOTADVADC#2 on 2/22/90)) (Dkt'd 03/16/90).
Feb. 22	35	Appearance of attorney COLE, DAVID (JUDGE JUNE L. GREEN) (Dkt'd 03/16/90).
Mar. 5	36	OPINION. (N) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90). Order filed (granting deft.'s motion to dismiss. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	37	Motion to dismiss granted (MOT#2) (of deft.) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	38	Excludable delay due to hearings on Pre-trial Motions began on 12/05/89 and ended on 03/05/90 (Dkt'd 03/23/90).
Mar. 5	39	Dismissed (Count 1) (Order granting deft.'s motion to dismiss.) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	40	Excludable delay while defendant motion under advisement, began on 02/22/90 and ended on 03/05/90 (Dkt'd 03/23/90).
Mar. 6	41	Filed transcript of proceedings for 02/22/90 (Pages 1-56. (REP: Katherine K. Moomey, Miller Reporting Co.)) (Dkt'd 03/23/90).

DATE	NR	PROCEEDINGS
Mar. 6	42	Filed notice of appeal to Supreme Court (Count 1) (APPL#1) (by govt., from the orders of USDC filed on 3/5/90 dismissing the criminal information filed in this matter.) (Dkt'd 03/23/90).
Mar. 17	43	(APPL#1) (Receipt of Notice of Filing Appeal, from Office of the Clerk, Supreme Court of the U.S., dated 3/13/90, No. 89-1433, October Term, 1989.) (Dkt'd 03/23/90).

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-0421

UNITED STATES OF AMERICA

v.

SCOTT W. TYLER

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
1989		
Oct. 31	1	Filed information (Dkt'd 11/07/89). Cases assigned to JUDGE JUNE L. GREEN (Dkt'd 11/07/89). -Category A (Dkt'd 11/07/89).
Oct. 31	2	Order defendant released on personal recognition with conditions (MAGISTRATE ROBINSON) (Dkt'd 11/07/89).
Oct. 31	3	Order appointing attorney KRAUT, NINA to represent defendant (Dkt'd 11/07/89). US Attorney ISCOE, CRAIG added to case (Dkt'd 11/07/89).
Nov. 2	4	Arraignment and plea set for 11/06/89 @ 1:30 PM (Count 1) (before Judge June Green) (Dkt'd 12/05/89). Defendant's first appearance (Dkt'd 12/05/89).

DATE	NR	PROCEEDINGS
		Defendant appears with counsel (Dkt'd 12/05/89).
		Defendant enters plea of not guilty (Count 1) (defts motions due 12/14/89, Govts respon[s]e due 1/12/90 and defts reply due 1/17/90. Deft. per. recog. (Rep: G. Slodysko)) (JUDGE JUNE L. GREEN) (Dkt'd 12/05/89).
Nov. 7	6	Order filed (directing all pretrial motions be filed by 12-14-89. Govt's response due 1-12-90 and defts reply due 1-17-90. Signed 11/6/89. (N) (JUDGE JUNE L. GREEN) (Dkt'd 12/05/89).
Nov. 13	7	Order filed (directing that all pretrial motions by deft be filed by 12/4/89, Govts response due by 1/12/90 and defts reply due by 1/17/90 (N)) (JUDGE JUNE L. GREEN) (Dkt'd 12/05/89).
Nov. 28	8	Order filed (granting motion of deft. to extend time to file pretrial motions. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 12/14/89).
Nov. 28	9	Motion for extension of time to file pretrial motions filed (MOT#1) (Count 1) (Dkt'd 12/14/89).
Nov. 28	10	Motion for extension of time to file pretrial motions granted (MOT#1) (JUDGE JUNE L. GREEN) (Dkt'd 12/14/89).

DATE	NR	PROCEEDINGS
Dec. 5	11	Motion to dismiss filed (MOT#2) (Count 1) (Supplemental Memorandum, Addenda A-G and Exhibits 1-5.) (Dkt'd 12/14/89).
Dec. 5	12	Mark the beginning of a potential excludable period of type X-E starting on 12/05/89 ((In re MOTFDC#2 on 12/5/89)) (Dkt'd 01/16/90).
Dec. 5	13	Appearance of COLE, DAVID as co-counsel for defendant (Dkt'd 12/14/89).
1990		
Jan. 12	14	Motion filed (MOT#3) (of the Speaker and Leadership Group of The House of Representatives to appear as Amici Curiae. (Memorandum in opposition to defts motion to dismiss and Exhibits 1-27)) (Dkt'd 02/13/90).
Jan. 12	15	Motion filed (MOT#4) (to extend time within which to file reply motion.) (Dkt'd 02/08/90).
Jan. 12	16	Notice filed (of appearance of the United States Senate as Amicus Curiae. Supporting Memo. (Dkt'd 02/08/90).
Jan. 12	17	Memorandum in opposition to motion to dismiss (MOT#2) (Attachment A&B) (Dkt'd 02/08/90).
Jan. 16	18	Order filed (granting defts motion for extension of time within which to file Reply Motion, Pretrial motions to be filed not later than 1/23/90. (N) (Original filed in CR. 89-419)) (JUDGE JUNE L. GREEN) (Dkt'd 02/08/90).

DATE	NR	PROCEEDINGS
Jan. 16	19	Motion granted (MOT#4) (JUDGE JUNE L. GREEN) (Dkt'd 02/08/90).
Jan. 17	20	Order filed (granting motion of the Speaker and Leadership Group of U.S. House of Representatives to appear as amici curiae. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/08/09).
Jan. 17	21	Motion granted (MOT#3) (JUDGE JUNE L. GREEN) (Dkt'd 02/08/90).
Jan. 23	22	Memorandum in support of motion to dismiss (MOT#2) (Defts reply memorandum in support of motion to dismiss.) (Dkt'd 02/13/90).
Jan. 23	28	Motion filed (MOT#5) (for oral argument regarding the constitutionality of the Flag Protection Act of 1989) (Dkt'd 02/13/90).
Feb. 1	24	Status hearing held (status.) (Dkt'd 02/15/90).
Feb. 1	25	Status hearing set for 02/22/90 @ 1:30 PM (for oral argument. Deft. not present. (Rep: C. Gansle)) (JUDGE JUNE L. GREEN) (Dkt'd 02/15/90).
Feb. 5	26	Order filed (setting oral argument on 2/22/90 at 1:30 pm., directing deft. to be present. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 02/27/90).
Feb. 22	27	Status hearing held (Dkt'd 03/16/90).
Feb. 22	28	Motion to dismiss taken under advisement MOT#2) (of deft. (REP: Kay Moomey, Miller Reporting Co.)) (JUDGE JUNE L. GREEN) (Dkt'd 03/16/90).

<b>DATE</b>	<b>NR</b>	<b>PROCEEDINGS</b>
Feb. 22	29	Mark the beginning of a potential excludable period of type X-G startings on 02/22/90 and not to extend beyond 03/23/90 ((In re MOTADVDC#2 on 2/22/90) (Dkt'd 03/16/90).
Feb. 22	30	Excludable delay due to hearings on Pretrial Motions began on 12/05/89 and ended on 02/22/90 (Dkt'd 03/16/90).
Mar. 5	31	OPINION. (N) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90). Order filed (granting deft.'s motion to dismiss. (N)) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	32	Motion to dismiss granted (MOT#2) (of deft.) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	33	Dismissed (Count 1) (Order granting deft.'s motion to dismiss.) (JUDGE JUNE L. GREEN) (Dkt'd 03/23/90).
Mar. 5	34	Excludable delay while defendant motion under advisement, began on 02/22/90 and ended on 03/05/90 (Dkt'd 03/23/90).
Mar. 6	35	Filed transcript of proceedings for 02/22/90 (Pages 1-56. (REP: Katherine K. Moomey, Miller Reporting Co.)) (COPY – Original filed in CR 89-419)) (Dkt'd 03/23/90).
Mar. 6	36	Filed notice of appeal to Supreme Court (Count 1) (APPL#1) (by gov., from order of USDC filed on 3/5/90 dis-

<b>DATE</b>	<b>NR</b>	<b>PROCEEDINGS</b>
		missing the criminal information filed in this matter.) (DKt'd 03/23/90).
Mar. 19	37	(APPL#1) (Receipt of Notice of Filing Appeal, from Office of the Clerk, Suprem Court of the U.S., dated 3/13/90, No. 89-1433, October Term, 1989.) (Dkt'd 03/23/90).

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

No. CR89-315-R

UNITED STATES OF AMERICA

v.

MARK JOHN HAGGERTY, JENNIFER CAMPBELL,  
DARIUS STRONG, CARLOS GARZA

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
1989		
Nov. 28	1	AFFIDAVIT of Steven M. Dean & Stanley R. Pilkey w/exhibits A (Video Tape) & B-G (Photos)
Nov. 28	2	INFORMATION Warrants iss for defts 02-06.
Nov. 28	3	PRAECIPE for issuance of summons to deft <i>Haggerty</i> . Iss
Nov. 28	4	MOTION of Govt to seal Information & Affidavit
Nov. 28	5	ORDER (JLW) sealing Motion, Information & Affidavit <i>until the first appearance of any deft or until further order of the Court. cc AUSA</i>
Nov. 28	6	FINANCIAL AFFIDAVIT of deft <i>Stone/Strong</i>

DATE	NR	PROCEEDINGS
Nov. 28	7	ORDER (JLW) appointing CJA Charles Hamilton for deft <i>Stone/Strong</i>
Nov. 28	8	ENT (JLW) ARRAIGNMENT of deft <i>Stone/Strong</i> : Tape W1438; AUSA Robert Chadwell; def cnsl Charles Hamilton. Deft in custody. Deft pleads <i>NOT GUILTY</i> . TD set before PKS on 2/5/90 @ 9:00AM. PT mtgs due 12/21/89. Deft requests discovery. PR bond set w/PTS supervision & drug conditions. Govt moves to amend Information to reflect true name of deft as Darius Strong.
Nov. 28	9	CONSENT & WAIVER of deft <i>Strong</i>
Nov. 28	10	APPEARANCE BOND of deft <i>Strong</i>
Nov. 29	11	FINANCIAL AFFIDAVIT of deft <i>Haggerty</i>
Nov. 29	12	ORDER (JLW) appointing CJA John Mellen for deft <i>Haggerty</i>
Nov. 29	13	ENT (JLW) ARRAIGNMENT of deft <i>Haggerty</i> : Tape W1439; AUSA Robert Chadwell; def cnsl John Mellen. Deft pleads <i>NOT GUILTY</i> . TD set before PKS on 2/5/90 @ 9:00 AM. PT mtgs due 12/21/89. Deft requests discovery. PR bond set.
Nov. 29	14	CONSENT & WAIVER of deft <i>Haggerty</i>
Nov. 29	15	APPEARANCE BOND of deft <i>Haggerty</i>
Dec. 1	16	USMS RETURN of Warrant for arrest of deft <i>Stone</i> executed 11/28/89

DATE	NR	PROCEEDINGS
Dec. 1	17	ENT (JLW) ARRAIGNMENT of deft <i>Garza</i> : Tape W1443; AUSA Robert Chadwell; deft cnsl Kevin Peck; in custody. Consent & Waiver refused. Deft pleads <i>NOT GUILTY</i> to Information. PT mtgs due 12/21/89; deft requests discovery. PR Bond set w/PT services & drug conditions. Case to be reassigned to District Judge. 2/5/90 TD cancelled.
Dec. 1	18	APPEARANCE BOND of deft <i>Garza</i>
Dec. 1	19	FINANCIAL AFFIDAVIT of deft <i>Garza</i>
Dec. 1	20	ORDER (PKS) appointing Kevin Peck as CJA for deft <i>Garza</i>
Dec. 4	21	ENT (PKW) ARRAIGNMENT of deft Jane Doe as true name of <i>Jennifer Campbell</i> : Tape S1225; AUSA Robert Chadwell; deft cnsl Colin Kippen. In custody. Deft pleads <i>NOT GUILTY</i> to Information. TD set before Judge Rothstein. PT motions due 12/21/89 & deft requests discovery. PR Bond set.
Dec. 4	22	FINANCIAL AFFIDAVIT of deft <i>Campbell</i>
Dec. 4	23	ORDER (PKS) appointing Colin Kippen as CJA for deft <i>Campbell</i>
Dec. 4	24	APPEARANCE BOND of deft <i>Campbell</i>
Dec. 5	25	USMS RETURN of Warrant for arrest of deft <i>Jane Doe</i> executed 12/4/89

DATE	NR	PROCEEDINGS
Dec. 5	26	USMS RETURN of Warrant for arrest of deft <i>Garza</i> executed 12/1/89
Dec. 8	27	MINUTE ENTRY Jury trial is scheduled in this matter for 2/5/90 at 9:30 a.m.
Dec. 11	28	NOTICE OF APPEARANCE – of counsel for deft. <i>GARZA</i> .
Dec. 11	29	REQUEST of deft. <i>GARZA</i> for Special Notice re: discovery.
Dec. 12	30	NOTICE OF SUBSTITUTION AND WITHDRAWAL – of counsel for deft. <i>HAGERTY</i> . R. Gombiner substitutes in for J. Mellen.
Dec. 13	31	MOTION by all defendants to extend time in which to file pretrial motions from Dec 21, 1989 to Jan. 18, 1989 and to shorten time for hearing.
Dec. 15	32	NOTICE of hrg of Defts' mtn to extend time, ntd 12/29/89 **LODGED order
Dec. 15	33	MOTION Defts' to short time on mtn to extd, ntd 12/19/89 **LODGED order
Dec. 15	34	MOTION by William M. Kunstler for adm pro hac vice for Deft Haggerty, no fee cnsl notified
Dec. 15	35	DECLARATION of William Kunstler in sup of mtn to appear **LODGED order
Dec. 15	36	MOTION by David Cole for adm pro hac vice for Deft Haggerty, no fee cnsl notified

DATE	NR	PROCEEDINGS
Dec. 15	37	DECLARATION of David Cole in sup of mtn to appear **LODGED order
Dec. 15	38	MOTION by Ronald L. Kuby for adm pro hac vice for Deft Haggerty, no fee cnsl notified
Dec. 15	39	DECLARATION of Ronald L. Kuby **LODGED order
Dec. 15	40	AFDT of mailing
Dec. 19	41	ORDER (BJR) granting William M. Kunstler's mtn to appear as cnsl for deft <i>Haggerty</i> . Ent & cc 12/20
Dec. 19	42	ORDER (BJR) granting Ronald L. Kuby's mtn to appear as cnsl for deft <i>Haggerty</i> . Ent & cc 12/20
Dec. 19	43	ORDER (BJR) granting David Cole's mtn to appear as cnsl for deft <i>Haggerty</i> . Ent & cc 12/20
Dec. 19	44	ENT (BJR) Deft Haggerty's motion to shorten time on motion to extend pre-trial motion filing deadline and the underlying motion are GRANTED. The deadline is extended to 1/18/90. cc: cnsl, BJR
Dec. 20	45	USMS RETURN of Summons as unexecuted due to deft's appearance
Dec. 21	46	MOTION by deft. <i>Strong</i> to extend time within which to file pretrial motions.
Dec. 22	47	ORDER (BJR) deft <i>Strong</i> 's motion to extend time for filing pretrial motions

DATE	NR	PROCEEDINGS
		is granted. Pretrial motions deadline is extended to 1/18/90. (cc:cnsl)
		1990
	48	MOTION of deft Campbell to dismiss, not noted, & oral argument requested e 1/18/90
	49	MOTION of deft <i>Campbell</i> to file brief in excess of 12 pages
	49a	Defts' Memorandum in support of mtn to dism
	50	AFFIDAVIT of Kevin Peck
	51	AFFIDAVIT of Hand delivery
	52	MOTION of deft <i>Strong</i> to dism the Information noted for 1/26/90, evidentiary hearing requested e 1/18/90
	53	MEMORANDUM of deft re: outrageous conduct of Govt officials
	54	AFFIDAVIT of Hand delivery
	55	MOTION of govn't to extend briefing schedule. NTD 2/2/90.
	56	AFFIDAVIT of Mark Bartlett
	57	MOTION of govn't to shorten time on motion to extend briefing schedule. NTD 1/24/90. **Lodged Order to extend briefing schedule **Lodged Order to shorten time

DATE	NR	PROCEEDINGS
Jan. 23	58	LETTER From Def Cnsl for Def <i>GARZA</i> re: noting date for Mtn. to Dismiss set for 1/26/90
Jan. 25	59	ORDER (BJR) Shortening Time for Mtn. of Plf to extend briefing schedule til 1/25/90. Cc & Ent. 1/25/90
Jan. 25	60	ORDER (BJR) GRANTING Mtn. of Plf to extend briefing scheduled til 2/9/90. Cc & Ent. 1/25/90
Jan. 29	61	MOTION of Speaker Thomas Foley & Leadership Group of House of Reps. to Appear as Amici Curiae
Jan. 29	62	MOTION of Amici Curiae to exceed page limit
Jan. 29	63	ORDER (BJR) GRANTING the Speaker & Leadership of the House of Representatives status to appear Amici Curiae. Cc & Ent. 1/30/90
Jan. 29	64	ORDER (BJR) GRANTING Motion of Amici Curiae to file overlength brief. Cc & Ent. 1/30/90
Jan. 29	65	MEMORANDUM of Amici Curiae in opposition to Def's Motion to Dismiss **Lodged Agreed Order Modifying Bond
Jan. 31	66	ORDER (BJR) Setting oral argument on pending motions for 2/14/90 at 9:30 a.m. and continuing trial to 2/26/90
Feb. 1	67	NOTICE OF APPEARANCE of U.S. Senate to appear as Amicus Curiae

DATE	NR	PROCEEDINGS
Feb. 1	68	MOTION of Amicus U.S. Senate to exceed page limit. **Lodged Order to exceed page limit
		**Lodged Memorandum of Amicus U.S. Senate in support of constitutionality of Flag Protection Act
Feb. 2	69	AGREED ORDER (JWL) re: <i>Garza</i> modifying Bond ent & mld 2/2/90
Feb. 1	70	ORDER (BJR) for pmt of fees & expenses to John Mellen (\$604.20)
Feb. 2	71	MOTION govt's, to shorten time to hear mtn to file overlength brief (not noted) LODGED order re: #71
Feb. 2	72	MOTION govt's, to file overlength brief (noted 2/16/90) LODGED response to defendants' mtn to dismiss CtII
		LODGED response to defts' mtn to dismiss for outrageous government conduct
Feb. 5	73	ORDER (BJR) permitting overlength brief for amicus curiae U.S. Senate cc.c
Feb. 5	74	MEMORANDUM of U.S. Senate
Feb. 5	75	ORDER (BJR) shortening time to 2/5/90 mtn to permit government to file overlength briefs cc.c

DATE	NR	PROCEEDINGS
Feb. 5	77	RESPONSE govt's, to [defts'] mtn to dismiss Count II
Feb. 5	78	RESPONSE govt's, to defts' mtn to dismiss for outrageous govt conduct
Feb. 7	79	MOTION all defts', to file overlength reply brief (N 2/23/90)
Feb. 7	80	AFFIDAVIT of Kevin Peck in support of #79 LODGED reply brief LODGED order re: #79
Feb. 7	81	MOTION all defts', to shorten time re: #79 to 2/9/90
Feb. 7	82	AFFIDAVIT of Kevin Peck in support of #81 LODGED order re: #81
Feb. 7	83	AFFIDAVIT of mailing of #79-#84
Feb. 7	84	AFFIDAVIT of hand deliver of #79-#84
Feb. 9	85	ORDER (BJR) Motion to shorten time re: #79 is GRANTED. (cc:cnsl, BJR)
Feb. 9	86	ORDER (BJR) Motion to file reply brief in excess of 12 pages is GRANTED. (cc:cnsl, BJR)
Feb. 9	87	REPLY MEMORANDUM of defts. in support of motion to dismiss.
Feb. 13	88	OBJECTION of deft Strong to use of affidavits in lieu of evidentiary hearing

DATE	NR	PROCEEDINGS
Feb. 14	89	MINUTE ENTRY of hearing on defts' mtn to dism. Court hears argument & takes this matter under submission. Cnsl shall notify the court at the earliest possible date as to whether this matter will proceed to trial. Ent & cc 2/15
Feb. 14	90	PRAECIPE by counsel for defts <i>STONE</i> and <i>STRONG</i> requesting issuance of subpoenas in blank.
Feb. 15	91	TRANSCRIPT of proceedings held before BJR on 2/14/90 re: Motion to Dismiss.
Feb. 16	92	LETTER from counsel for deft. <i>GARZA</i> re: February 26, 1990 trial setting. (copy)
Feb. 21	93	MEMORANDUM DECISION (BJR) dismissing count II of the Information based on unconstitutionality of Flag Protection Act (cc: cnsl, BJR, USMO, USPO, J & O)
Feb. 21	94	ENT (BJR) Trial date is vacated pending resolution of appeal that govn't advises court it will file re: order of 2/21/90. (cc: cnsl, Linda Carter)
Feb. 23	95	NOTICE OF APPEAL TO THE SUPREME COURT OT THE US by pltf #89-1434 US Govt from the order filed 2/21/90 Cert. of Svc. attached. (cc: BJR)

DATE	NR	PROCEEDINGS
Feb. 28	96	MOTION of deft <i>Haggerty</i> to amend conditions of Pretrial release, noted for 3/2/90
Feb. 28	97	AFFIDAVIT in support of #96
Feb. 28	98	MOTION of deft <i>Haggerty</i> to shorten time of #96 to 3/2
Feb. 28	99	AFFIDAVIT in support —Lodged Order re #96
Feb. 28	100	NOTICE OF Change of address of Charles Hamilton as atty for deft <i>Stone</i>
Feb. 28	101	ORDER (BJR) <i>denying</i> mtn to dism Information on grounds of outrageous Govt conduct. Ent & cc
Mar. 1	102	MINUTE ORDER (JLW) that deft <i>Haggerty's</i> mtn to amend conditions of release is GRANTED and that the travel restriction is stricken. Ent & cc
Mar. 2	103	NOTICE OF CHANGE OF ADDRESS —for atty Charles Hamilton (Amended)
Mar. 19	***	RECEIVED from U.S. Supreme Court Notice of Filing an Appeal #89-1434, Oct. Term, 1989
Mar. 21	104	AMENDED MEMORANDUM DECISION dismissing count II of Information based on unconstitutionality of Flag Protection Act. (cc:cnsi, BJR)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-0419

UNITED STATES OF AMERICA

v.

SHAWN D. EICHMAN

[Filed: Oct. 31, 1989]

INFORMATION

The United States informs the court that:

On or about October 30, 1989, within the District of Columbia, SHAWN D. EICHMAN, did knowingly mutilate, deface, physically defile, burn, maintain on the floor or ground, and trample a flag of the United States.

(In violation of Title 18 U.S. Code, Section 700)

JAY B. STEPHENS  
United States Attorney  
District of Columbia

By: /s/ Craig Iscoe  
CRAIG ISCOE  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-0420

UNITED STATES OF AMERICA

v.

DAVID GERALD BLALOCK

[Filed: Oct. 31, 1989]

**INFORMATION**

The United States informs the court that:

On or about October 30, 1989, within the District of Columbia, DAVID GERALD BLALOCK, did knowingly mutilate, deface, physically defile, burn, maintain on the floor or ground, and trample a flag of the United States.

(In violation of Title 18 U.S. Code, Section 700)

JAY B. STEPHENS  
United States Attorney  
District of Columbia

By: /s/ Craig Iscoe  
CRAIG ISCOE  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-0421

UNITED STATES OF AMERICA

v.

SCOTT W. TYLER

[Filed: Oct. 31, 1989]

**INFORMATION**

The United States informs the court that:

On or about October 30, 1989, within the District of Columbia, SCOTT W. TYLER, did knowingly mutilate, deface, physically defile, burn, maintain on the floor or ground, and trample a flag of the United States.

(In violation of Title 18 U.S. Code, Section 700)

JAY B. STEPHENS  
United States Attorney  
District of Columbia

By: /s/ Craig Iscoe  
CRAIG ISCOE  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

No. CR89-315-R9

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARK JOHN HAGGERTY, a/k/a ADEN XOULD,  
 CARLOS GARZA, COLIN STONE,  
 JOHN DOE NUMBER ONE, JOHN DOE NUMBER TWO,  
 JOHN DOE NUMBER THREE, and  
 JANE DOE, DEFENDANTS

[Filed: Nov. 28, 1989]

INFORMATION

The United States Attorney charges that:

COUNT I

On or about October 28, 1989, MARK JOHN HAGGERTY, a/k/a ADEN XOULD, COLIN STONE, JOHN DOE NUMBER ONE, JOHN DOE NUMBER TWO, JOHN DOE NUMBER THREE, and JANE DOE, did willfully injure or commit a degradation [sic] against property of the United States and an agency, thereof, to wit, a flag of the United States, which was the property of the United States Postal Service.

All in violation of Title 18, United States Code, Sections 1361 and 2.

COUNT II

On or about October 28, 1989, MARK JOHN HAGGERTY, a/k/a ADEN XOULD, COLIN STONE, JOHN DOE NUMBER ONE, JOHN DOE NUMBER TWO, JOHN DOE NUMBER THREE, and JANE DOE, did knowingly burn a flag of the United States, to wit, the flag of the United States, which was the property of the United States Postal Service.

All in violation of Title 18, United States Code, Sections 700(a)(1) and 2.

DATED THIS 28th day of November, 1989.

/s/ Mike McKay  
 MIKE MCKAY  
 United States Attorney

/s/ David E. Wilson  
 DAVID E. WILSON  
 Assistant United States Attorney

/s/ Kenneth R. Parker  
 KENNETH R. PARKER  
 Assistant United States Attorney

/s/ Robert G. Chadwell  
 ROBERT G. CHADWELL  
 Assistant United States Attorney

UNITED STATES ATTORNEY  
 3600 Seafirst Fifth Avenue Plaza  
 Seattle, WA 98104  
 (206) 442-7970

**AFFIDAVIT**

STATE OF WASHINGTON)

)

COUNTY OF KING )

)

STEVEN M. DEAN and STANLEY R. PILKEY, each being first duly sworn on oath, depose and say:

1. Each of your affiants is a federal law enforcement officer assigned to duty in Seattle, Washington. Special Agent Steven Dean has been employed by the Federal Bureau of Investigation for approximately eighteen (18) months. Postal Inspector Stan Pilkey has been employed by the United States Postal Inspection Service for approximately nineteen (19) years.

2. During the week of October 23, 1989, each of the affiants became aware that a protest to the recently enacted "flag burning" law was scheduled to be conducted in front of the United States Post Office at Broadway and Denny in Seattle, at midnight, on October 27, 1989.

3. Each of your affiants along with other F.B.I. agents and postal inspectors, were assigned to conduct surveillance of the protest because of the announced intention to burn a flag of the United States.

4. Your affiants were personally present at the protest and remained there for the duration of the event. Each was an eyewitness to the conduct described in this affidavit.

5. Postal Inspector John Buck was also present throughout the protest operating a video camera to record the event. Postal Inspector Buck produced a videotape which depicts portions of the protest. Your affiants have reviewed the videotape.

6. Your affiants also observed camera crews from various Seattle television stations filming the protests. Selected news broadcasts from KOMO, KING, and KIRO

have also been reviewed by your affiants. (A composite tape which consists of both the postal inspectors tape and the commercial news broadcasts is attached as Exhibit A.)

7. The protest began when individuals claiming to be Vietnam veterans burned a United States flag and numerous postage stamp-sized facsimiles of a United States flag.

8. Each of your affiants then became aware of an individual attempting to climb the flagpole at the United States Post Office building.

9. Special Agent Dean moved to one edge of the crowd which had gathered around the base of the flagpole. Postal Inspectors Pilkey and Buck moved to the other side of the crowd.

10. Each of your affiants observed the flag being lowered to ground level. Once the flag was in reach of the crowd, individuals began to set the flag on fire.

11. Your affiants observed seven (7) separate individuals participating in burning the United States flag from the Post Office. The burning began approximately 12:10 p.m., on October 28, 1989.

**Mark John Haggerty, a/k/a Aden Xould**

12. Your affiants observed a young white male wearing a predominantly green tie-dyed tee shirt setting fire to the flag.

13. This same individual was observed standing at the corner of the Post Office as others set fire to the flag.

14. This individual then participated in running the burning flag back up the flagpole.

15. Special Agent Dean has met this individual and identified him as Mark John Haggerty. Special Agent Dean has also learned that Haggerty also uses the name Aden Xould.

**Carlos Garza**

16. Your affiants observed a dark-haired white male with Hispanic features setting the same United States flag afire. This individual helped raise the burning flag up the flagpole.

17. This individual was approximately five (5) feet seven (7) inches tall, with short dark hair. He had no moustache or beard and was wearing a grey sweater with a design in the shoulder and chest area. He appeared to be in his mid-twenties.

18. This individual provided the name of Carlos Garza to a member of the staff of the Tacoma News Tribune.

19. This individual is shown on Exhibit A. Stillprints of the individual are attached as Exhibit B.

**Colin Stone**

20. Your affiants observed a tall white male throwing a flammable liquid from a container labeled "Napalm" onto the flag and setting fire to the same United States flag.

21. This individual was dressed in black leather jacket with numerous metal studs around the collar and cuffs and an Iron Cross insignia on the left shoulder. The individual's head appeared to have been shaved on the sides with hair left on the top of his head in a quasi-Mohawk style. The individual had a small ponytail style clump of hair on the back of his head. He had an earring in the left ear. He appeared to be in his early twenties.

22. This individual is shown on Exhibit A. Stillprints of the individual are attached as Exhibit C.

**John Doe Number One**

23. Your affiants observed a thinly built male with long dark hair setting fire to the same United States flag.

24. This individual was wearing a dark colored hat with a light colored hatband. The individual was also wearing a dark colored coat. The individual did not have a moustache or a beard. He appeared to be in his mid-twenties.

25. This individual is shown on Exhibit A. Stillprints of the individual are attached as Exhibit D.

**John Doe Number Two**

26. Your affiants observed an individual carrying a flag somewhat similar to a United States flag, set fire to the same United States flag.

27. This individual had long dark hair, a moustache, and a long beard. The individual was medium height and build. He wore a dark colored hat with a hatband which had a light colored sinuous design. He appeared to be in his late twenties or early thirties.

28. This individual is shown on Exhibit A. A stillprint of the individual is attached as Exhibit E.

**John Doe Number Three**

29. Your affiants observed a well-dressed, middle-aged white male with a stocky build setting fire to the same United States flag.

30. This individual has dark hair, with neatly trimmed moustache and beard. This individual wore glasses. He was wearing a thigh-length tan-colored, single-breasted coat.

31. This individual is shown on Exhibit A. Stillprints of the individual are attached as Exhibit F.

**Jane Doe**

32. Your affiants observed a young white female in her early twenties with medium length brown hair setting fire to the same United States flag.

33. This individual wore a blue sweater over a white turtleneck and light-colored pants. She was approximately five and one-half (5-1/2) feet tall with a medium build.

34. This individual is shown on Exhibit A. Stillprints of the individual are attached as Exhibit G.

35. After the flag was engulfed in flames, it was hauled back up the flagpole and left to burn.

36. The flag was totally destroyed with the exception of a small segment of the border.

37. The flag was the property of the United States Postal Service, an agency of the United States, and the remaining segment of the flag is so imprinted.

/s/ Steven Dean

STEVEN DEAN, Special Agent  
Federal Bureau of Investigation

/s/ Stan Pilkey

STAN PILKEY, Postal Inspector  
U.S. Postal Inspection Service

SUBSCRIBED and SWORN before me this 28 day of November 1989, by Steven Dean and Stan Pilkey.

/s/ John L. Weinberg

JOHN L. WEINBERG  
United States Magistrate

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal Nos. 89-0419/420/421 JLG

UNITED STATES OF AMERICA

v.

SHAWN D. EICHMAN, ET AL., DEFENDANTS

[Filed: Dec. 5, 1989]

**MOTION TO DISMISS**

Defendants Shawn Eichman, David Blalock, and Scott Tyler hereby jointly move, pursuant to Fed.R.Crim. P. Rule 12(b), to dismiss the informations filed against them. The grounds for defendants' motion are set forth in the accompanying Memorandum of Law.

Respectfully submitted,

/s/ David Cole

DAVID COLE  
Center for Constitutional Rights  
666 Broadway – 7th Floor  
NY, NY 10012  
(212) 614-6464

/s/ William Kunstler

WILLIAM KUNSTLER

RONALD KUBY

13 Gay Street

NY, NY 10014

(212) 914-5661

NINA KRAUT

3815 Yuma St., NW

Washington, D.C. 20016

(202) 745-0300

D.C. Bar No. 34815

**INCIDENT REPORT OF OFFICER CREEL**

**[Dated: Oct. 30, 1989]**

**STATEMENT OF FACTS:**

On Monday Oct. 30, 1989, at approximately 1200 pm, a group of individuals opposed to the "Flag Protection Act of 1989" walked to the East Center Steps to the U.S. Capitol Building closely followed by a large contingent of news media. At more than one location on the East Center Steps, four (4) individuals in this group removed flags of the United States and ignited or attempted to ignite them, apparently by means of butane cigarette lighters [sic] and/or matches. According to the text of a prepared statement which other members of this group were distributing in connection with this activity, these acts were undertaken in order to challenge the newly enacted flag protection provisions. The ignited flags were either entirely or partially consumed by the rapidly spreading flames. At approximately 12:02 pm., the four (4) individuals involved in this activity were placed under arrest and charged with violating the "Flag Protection Act of 1989" [P.L. 101-131], amending Title 18, Section 700(a) of the U.S. Code], "Demonstrating Without A Permit," in violation of Section 153 of the Traffic and Motor Vehicle Reg. for the United States Capitol Grounds, and "Disorderly Conduct," in violation of D.C. Code Section 22-1121. [Blalock] was read his rights, searched incident to arrest, and transported to 119 D St., N.E. for processing.

**INCIDENT REPORT OF OFFICER MILLHAM****[Dated: Oct. 30, 1989]****STATEMENT OF FACTS:**

On Monday, October 30, 1989, at approximately 12:00 PM, a group of individuals opposed to the "Flag Protection Act of 1989" walked to the East Center Steps to the U.S. Capital Building closely followed by a large contingent of the news media. At more than one location on the East Center Steps, four (4) individuals in this group removed flags of the United States and ignited or attempted to ignite them, apparently by means of butane cigarette lighters and/or matches. According to the text of a prepared statement which other members of this group were distributing in connection with this activity, these acts were undertaken in order to challenge the newly enacted flag protection provisions. The ignited flags were either entirely or partially consumed by the rapidly spreading flames. At approximately 12:02 PM, the four (4) individuals involved in this activity were placed under arrest and charged with violating the "Flag Protection Act of 1989" P.L. 101-131, amending title 18, section 700(a) of the U.S. Code. "Demonstrating Without A Permit" in violation of section 153 of the *Traffic and Motor Vehicle Regulations for the United States Capitol Grounds*, and "Disorderly Conduct," in violation of D.C. Code Section 22-1121.

**INCIDENT REPORT OF OFFICER MILLHAM****[Dated: Oct. 30, 1989]****STATEMENT OF FACTS:**

On Monday, October 30, 1989, at approximately 12:00 PM, a group of individuals opposed to the "Flag Protection Act of 1989" walked to the East Center Steps to the U.S. Capital Building closely followed by a large contingent of the news media. At more than one location on the East Center Steps, four (4) individuals in this group removed flags of the United States and ignited or attempted to ignite them, apparently by means of butane cigarette lighters and/or matches. According to the text of a prepared statement which other members of this group were distributing in connection with this activity, these acts were undertaken in order to challenge the newly enacted flag protection provisions. The ignited flags were either entirely or partially consumed by the rapidly spreading flames. At approximately 12:02 PM, the four (4) individuals involved in this activity were placed under arrest and charged with violating the "Flag Protection Act of 1989" P.L. 101-131, amending title 18, section 700(a) of the U.S. Code, "Demonstrating Without A Permit" in violation of section 153 of the *Traffic and Motor Vehicle Regulations for the United States Capitol Grounds*, and "Disorderly Conduct," in violation of D.C. Code Section 22-1121.

Subject searched prior to incident to arrest and transported to 119 D St. NW, Washington, D.C. for processing.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-419 JLG

UNITED STATES OF AMERICA

v.

SHAWN E. EICHMAN

[Filed: Dec. 5, 1989]

**DECLARATION OF SHAWN D. EICHMAN**

Shawn D. Eichman, hereby declares, under penalty of perjury, as follows:

1. I am a defendant in this action. I submit this declaration to explain what I intended to communicate in burning the flag for which I have been charged. I mounted the steps of the Capitol on October 30, 1989, and burned a flag for many reasons, to protest the enforced patriotism represented by Flag Protection Act, and as a woman, to protest the government's blatant war on women and increased restrictions on civil and human rights.

2. I refuse to obey a law giving the flag more protection than the people, and refuse to allow the President to amend the constitution to give the flag equal rights, but not women.

3. I see the specter of fascism in this attempt to force patriotism, with the added insult of forced reproduction, and the injury of forced sterilization.

4. When Hitler came to power in Germany, a major theme in government became linking the role of women

with the strengthening of the nation. Abortion and homosexuality became immoral crimes against the state, and laws were passed to force patriotism to the swastika, to force motherhood, and to force sterilization of "unfits." A national "guilt trip" was placed on women to push them out of the work force, and into the cannon fodder business.

5. Today, women are guilt tripped for wanting control of their own destiny and bodies. Abortion and homosexuality are criminalized, and women considered "unfit" (Native American and Puerto Rican women especially) are routinely sterilized by government sponsored clinics, with government encouragement.

6. The christian fascists, and morality police (brown-shirts for the President, Congress, and the Supreme Court), have launched a misogynist offensive of "national renewal" to put women in their place, and a flag in every household.

7. Confiscated from me on October 30 was a red, white, and blue maternity bra which I intended to burn in protest while standing on a flag. I submit this as evidence against the state for the murder of thousands of women by rape, back alley abortions, discrimination, and sexism sponsored by this imperialist and patriarchal empire.

8. Also confiscated was a flag signed by visitors of a flag art show (now illegal), who share my interpretation of the flag. I submit this as evidence against the state for their attempt to mask the crimes committed under this flag with forced patriotism.

9. I find the U.S. government in *contempt* of the rest of the world for economic exploitation, and capitalistic plunder.

10. The U.S. has exhibited blatant disregard for the environment, and for the people of the world, to whom the flag is an international symbol of oppression and

murder. The flag waves over open trade with the apartheid government of South Africa. The flag funds Salvadoran Death Squads as they murder for democracy. The flag flies over U.S. intervention in Nicaragua, Peru, Columbia, Korea. The flag flew as American soldiers raped and murdered children, parents, neighbors, and families in Vietnam.

11. Some say President Bush is guilty of his own "Flag Protection Act" for defiling the flag by wrapping himself in it. I think it's no surprise since this flag represents the interest of the bourgeoisie and imperialist patriarchy. It's only fitting that he wrap himself in this flag of capitalism while passing down death sentences to women already victimized by rape and incest, Black youth victimized by poverty, victims of AIDS, and homeless victims of capitalism.

12. He hypocritically denounces the suppression of political dissent in other countries while outlawing it in the U.S., and declares a police state on striking coal miners, while smiling at Solidarity in Poland.

13. Yes, I've burned flags. It was my intention to send a direct message to the government and internationally, to transcend language barriers, and in a single symbolic act, to indict the government for its participation and promotion in world oppression.

14. If I had stood there on the steps and shouted in anger, my voice would have been limited to those within earshot who spoke english. I chose a form of symbolic political speech, flag burning, to tell the world that this system will know no peace while people are suffering.

15. My message was spread through the media to the eyes of the people of the world. It is to them that I will hold myself accountable.

16. I cannot be quiet, or utilize less effective means of communicating dissent, when a woman is raped every six

minutes, Black people are killed for walking down the wrong streets, and homeless people and people with AIDS starve and die in front of vacant city owned buildings.

17. I have burned a flag, but I have committed no crime. The real criminal in this case is the United States government for cloaking their murderous crimes in forced patriotism.

18. The people of the U.S. have delivered *their* verdict. On July 3rd, (in response to the *Webster* decision), and on October 28th, when this fascist Flag Protection Act went into effect, flags burned across the country.

19. The people of the world have delivered their verdict as well, and flags will continue to burn internationally, wherever U.S. intervention and exploitation is opposed.

20. The government has made it a crime to express strong political dissent against its symbols. To the oppressed, burning the flag is a celebration!

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Shawn D. Eichman  
SHAWN D. EICHMAN

Dated: 12-1-89

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-420 JLG

UNITED STATES OF AMERICA

v.

DAVID GERALD BLALOCK

[Filed: Dec. 5, 1989]

**DECLARATION OF DAVID GERALD BLALOCK**

DAVID GERALD BLALOCK, hereby declares, under penalty of perjury, as follows:

1. On October 30, 1989, I knowingly and intentionally set an American flag on fire on the front steps of the U.S. Capitol [sic]. I was joined in this act by my co-defendants, Shawn Eichman and Dred Scott Tyler, as well as by Gregory Lee "Joey" Johnson. We notified the press in order to amplify the message. At the same time that we burned the flag, we circulated the statement attached hereto as Addendum A.

2. For me, burning the flag of the United States was an act of deeply-felt moral conviction, growing out of the days in which I fought in an immoral and obscene war started, maintained, and directed by another generation of flag wavers.

3. As a kid, I believed in the American flag. I grew up in the coal mine-steel mill region of western Pennsylvania. From kindergarten through high school I was thoroughly indoctrinated in patriotism with the daily ritualistic Pledge

of Allegiance to the Flag and a steady diet of John Wayne war movies.

4. In 1968, I joined the Army. It was the traditional thing to do, to serve my country, carry high its flag, and blindly go with the flow. I asked no questions. Patriotism was enough of a reason.

5. I volunteered for duty in Vietnam and served there in 1969 and 1970. I received several medals for my military service, including the National Defense Service Medal, the Vietnam Service Medal, and the Vietnam Campaign Medal.

6. From my first days of basic training at Fort Jackson, South Carolina, the American flag hung over every aspect of my military education. It flew over the buildings where Army instructors taught me that Asian people were sub-human, to be known only as "slopes," "slant eyes" or "gooks." "Old Glory" flapped in the breeze above the bayonet training area where I spent hours stabbing yellow skinned silhouettes while shouting "kill, kill, kill without mercy." I remember the Flag flying ominously above the Fort Jackson stockade as a reminder that if I didn't go along with the game plan, the Army would jail me for 6 months of hard labor.

7. I arrived in Vietnam in February 1969. When I stepped off the plane at Bien Hoa Airbase, the American Flag hung drooping in the stifling hot air, which carried the stench of napalmed burning human flesh.

8. The Flag flew above the Replacement Battalion at Long Binh where I was processed and assigned to another base camp. At that point the flag reminded me of basic training and the bayonet practice. "Kill, kill, kill without mercy." Any skepticism on my part toward carrying out my duty was quickly dispelled as I went by the large military prison known as L.B.J. (Long Binh Jail). There the American Flag hung onerously above a large number

of incarcerated American soldiers who refused to take part in the American death machine.

9. The "Red, White and Blue" flew above the small base camp that I was assigned to in Vietnam. But there I discovered that most of my fellow soldiers were opposed to the war—opposed the killing, the brutality, the destruction of someone else's country. Despite the threat of imprisonment, I gathered courage from their opposition and joined with it. Even with the widespread resistance of American soldiers on the ground, the death machine continued to operate. It came mainly from the air, but was still blessed by the American Flag and anointed with patriotism.

10. When I returned to the United States I still had time to serve in the Army. I was assigned to Fort Rucker, Alabama, where I participated with hundreds of other GI's and students in an anti-war protest. Because of my participation, an officer who stood beneath the flag ordered me transferred to another base. I was sent to Fort McClellan, Alabama. There I joined a large number of enlisted persons who functioned as an organized anti-war group. We held meetings, published a newspaper, and organized opposition to our government's death and destruction in Vietnam. Patriotic army officers, blessed by the "Red, White and Blue," did everything in their power to silence us.

11. Upon discharge from the army, I joined an organization known as Vietnam Veterans Against the War. In April 1973, a "Home with Honor" parade was held in New York City. The only organized political group of Vietnam vets who participated in the parade marched in the Vietnam Veterans Against the War contingent behind the banner "No Honor Here, No Honor There." I can remember the American flag very distinctly at this parade. Our group received thunderous applause and cheers from the spec-

tators along most of the march, until we reached the reviewing stand. There, a handful of flag-waving spectators booed and spit on us, and the officers and dignitaries on the reviewing stand turned their backs on us. The only time in my life as a veteran that I was spit on and insulted was by flag-waving patriots.

12. These people symbolized only what government officials did for the Flag behind the scenes. Like all other anti-war protesters, our activities were the target of a concerted government effort to disrupt, discredit and "neutralize" constitutionally-protected protest activities. The FBI agents and COINTELPRO operatives who violated my so-called constitutional rights did so under the flag and the government for which it stands.

13. An entire generation has passed since the Vietnam War. The United States government continues to support fascism abroad and repression at home. Every bullet that kills a Nicaraguan peasant, every bayonet that stabs a Salvadoran priest, every cluster bomb that maims a Palestinian child was provided by men and women who wave the flag.

14. I burned the flag of the United States as a vow, two decades after Vietnam, that I will continue to fight against the imperialism and racism that brought death and destruction to the people of Vietnam, and that continues to bring death and destruction to the people of Nicaragua, El Salvador and many other places around the world.

15. I felt that burning the Flag is a vital and indispensable means by which to communicate this message. The act of flag burning is a dramatic and total rejection of forced patriotism and the corruption that it conceals. It is an act clearly understood by all the world's people.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ David Gerald Blalock  
DAVID GERALD BLALOCK

Dated: 11-28-89

#### ADDENDUM A

#### STATEMENT BY THOSE CHALLENGING THE "FLAG PROTECTION ACT OF 1989"

October 30, 1989—12 Noon, Steps of the U.S. Capitol

At midnight this past Friday, October 27, the new national flag statute went into effect, outlawing desecration of the U.S. flag. This law demands punishment of up to a year in jail and a \$1,000 fine for anyone who "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States." These dangerous moves to shut people up and shut people down in the name of the red, white and blue are not in the interest of the majority. Today, they try to suppress political expression in the name of the flag, tomorrow what next will become forbidden. We need only look at Nazi Germany to see an answer to that.

At midnight this past Friday, the flag law went into effect. At one minute past midnight hundreds of people across the country delivered their judgment on that law, expressing themselves as so many have already done around the world. Over 1,000 U.S. flags were barbecued, napalmed, torched, set ablaze and properly displayed. The people who did this were diverse in their backgrounds, had different reasons for acting, and hold many different views toward the meaning of the flag itself. But especially in a political climate marked by increasing racism, assaults on women's rights, calls for an enforced oppressive moral code, censorship, intervention in other countries and overall escalating attacks on the people, all deeply felt the need to defy a law that would make the flag a religious icon and its worship mandatory. The government would have liked its new law to go down easy, the people are not going to make it easy for them.

We are among those who acted that night, and we intend to continue that protest here today, and express ourselves on this question. To the government that has made flag desecration illegal, we defy your law. And we challenge you. Arrest us. Test your statute. Take it back to your Supreme Court and try once again to claim it is consistent with your constitutional standards of free speech. Go ahead and try to argue some more for an amendment. But check this out. You will have a problem. As you editorialize on the sanctity of free speech, denouncing the suppression of dissent in other countries you will be silencing it here, provoking questions when you need obedience, opposition when you expect compliance, and millions upon millions more will come to understand what is really going down, that this effort to ban flag desecration is not really about adding some legal asbestos to a piece of cloth, but rather the forceful suppression of political dissent as part of a much larger and vicious agenda. And the people will oppose you.

To all those watching and listening today, here and around the world, we say this. The battle lines are drawn. On one side stands the government and all those in favor of compulsory patriotism and enforced reverence to the flag. On the other side are all those opposed to this. And to all the oppressed we have this to say also. This flag means one thing to the powers that be and something else to all of us. Everything bad this system has done and continues to do to people all over the world has been done under this flag. No law, no amendment will change it, cover it up, or stifle [sic] that truth. So to you we say, Express yourself! Burn this flag. It's quick, it's easy, it may not be the law, but it's the right thing to do.

FIGHT THE FASCIST FLAG LAW

## NO FLAG AMENDMENT

## NO MANDATORY PATRIOTISM

Dave Blalock, Vietnam Veterans Against the War (Anti-Imperialist)

Shawn Eichman, Coalition Opposed to Censorship in the Arts

Joey Johnson, Revolutionary Communist Youth Brigade

Dread Scott, revolutionary artist

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal No. 89-421 JLG

UNITED STATES OF AMERICA

v.

SCOTT W. TYLER

[Filed: Dec. 5, 1989]

DECLARATION OF SCOTT W. TYLER

SCOTT W. TYLER, aka "DREAD SCOTT," declares as follows:

1. I am a Chicago based revolutionary artist, and a defendant in this action.

2. On October 30, 1989 I burned an American flag on the steps of the United States Capitol. Gregory Lee "Joey" Johnson, defendant in *Texas v. Johnson*, Shawn Eichman, a revolutionary artist, and Dave Blalock, a Vietnam Vet, joined me in this action as well. We chanted "Burn Baby Burn," amongst other things, as America's "holy icon" went up in smoke. Now the suckers who run this system have dragged us to court, or at least some of us.

3. My reason for burning the flag was highly political and intentional. Why would I burn a U.S. flag? From the standpoint of the people of the world, this flag represents nothing but hundreds of years of brutal oppression. Perhaps a better question would be "Why wouldn't people want to burn their flag?" The real question is "What right

do they have to suggest that their whole empire should continue to be allowed to exist, let alone think that their bloody flag should be (or could even be) protected by some legal asbestos?"

4. The system has passed new repressive "flag desecration" laws on the local, State, and federal level which outlaw antipatriotic dissent, which compel respect for the flag, and which attempt to make patriotism the order of the day. In fact, part of the wording of the very law which I am now accused of violating, the part which reads "maintains on the floor or ground," was written in direct response to my art. The city of Chicago dragged me and nine other artists to court to prevent us from displaying our art, all of which had flags in it. They attempted to get a ruling that their newly enacted city ordinance, which was written in direct response to and which outlawed my artwork, "What is the Proper Way to Display a U.S. Flag?," was constitutional. Would that not have been reason enough to protest?

5. "What is the Proper Way to Display a U.S. Flag?," which was displayed at the School of the Art Institute of Chicago in February and March 1989, is a photographically based installation for audience participation. It concentrates the hopes, joys, aspirations, and ideology of the oppressed. It consists of a 16" x 20" photomontage which combines a picture of several South Koreans burning a U.S. flag holding a sign which states "Yankee go home son of bitch," and a picture of several coffins draped in American flags. The title, "What is the Proper Way to Display a U.S. Flag?," is also printed on this photomontage. Below this is a shelf with ledger books in which viewers may respond to this question. And below that is an American flag spread on the floor. Audience participation, including but not limited to writing comments in the ledger book and/or walking on the flag, is an essential and

integral part of the art work. During its display at the School of the Art Institute of Chicago, and at a recent show in New York, thousands of people participated with the piece, "trampling" on the flag and writing comments in the ledger books. This piece made many people question and brought many into opposition to this system and the laws which are now enshrining the flag. This work may now be illegal because of this law. Would this not be reason enough?

6. In response to the display of my artwork in Chicago, 2500 VFW and other reactionary vets attempted to suppress my art. I received death threats from Marines, policemen and good life loving rednecks, because I dared make art which questioned and challenged their system. Bomb threats were phoned into the School of the Art Institute. The Chicago Park District threatened to cut funding from all museums (\$28 million) until the school explained it action. The State cut Illinois Art Council funding of the School and the Illinois Arts Alliance to \$1 because they wouldn't capitulate and either remove or condemn my artwork. All of this has definitely reaffirmed my contempt for this system and is reason enough to barbecue O'l Glory.

7. The reactions of the thousands of people who interacted wth my artwork show the extreme divergence of viewpoints on patriotism and this flag. They demonstrate just how deep a social question the flag poses at this time, one which is and must continue to be broadly debated. And they reveal that there are many people who despise the flag and everything it represents. Below is a sampling of their comments:

To Dread Scott and all other shit-for-brains liberals: God Guns and Guts made this nation, and for assholes like yourself to desecrate our American flag is not even worth describing.— a Marine

Let it burn, Let it burn, Let the Fucker Burn, Burn, Burn. The first time I had to confront the flag was in Vietnam— Black GI's in my unit refused to stand & salute it. After much debate and anguish I did the same. The second time was when I found Marine Vets burning the Flag in anger. Finally I had to understand why youth carried the Viet Cong flag in support of the Vietnamese were right and deserved to Win! Since then I've seen it burned all over the world and I welcome it. The U.S. deserved to be defeated in Vietnam and deserves the same around the world. Joe Urgo Viet Vet – 1968

Go fuck yourself Dread Scott Tyler. You are lucky to be living in this country. (See you in hell)— Chicago Police Officer

That goes double for me asshole— Chicago Police Officer

Art for the people by the people with the people insight the people against the people agitate the people scare the people make the people think instead of being the lemmings the people usually are— Dread Scott you done all that. Thank You.

I used to believe in the freedom of expression that the United States stood for; equality, harmony, peace. Now people want to kill Scott. Enough said, sad world.

In Russia you would be shot, and your family would have to pay for the bullets. But once again what do you expect from a nigger named "Dread Scott"?

I understand your disappointment with the USA and can only imagine the bitterness you must feel toward this country. Therefore, I understand you desire to see the flag on the floor. I hope that your exhibit will help the other segment (the one who want the flag to

fly) look into your reason. Personally, I am a white male so I'm standing off to the side while writing this page. Best of luck Mr. Tyler. signed from Seattle, Washington

Brother you have provoked "white supremacy" to reveal itself and that is a very special mission and reveals your special role in our "victory" over the murders of—millions of Native Americans—Mexicans—Central Americans—and especially Africans, Hampton and Clark, Malcolm X, Martin Luther King, Jr., Marcus Garvey, and thousands of other revolutionaries they have sought to silence in their Satanic attempt to overthrow "righteousness." Thank you Brother

Freedom of expression forever

You're an ignorant ass

This Shit ain't art

Right now a lady is on the ground crying because of what you have done. I feel you did something wrong and I feel you should be put in jail or have something done to you for this. I love my country and it hurts me to know that you don't. I hope you feel good about yourself for what you are putting people through. You're an asshole.

Dear Dread, Like someone who viewed the exhibit, I began reading other people's comments standing next to the flag, but gradually moved to standing on it. As someone raised to be iconoclastic (at least I thought I was) it was an interesting moment of self-awareness, which (I think) is the whole purpose of your display. Perhaps when human life and liberty is really valued above property (and symbols) in America, we will all have more respect for "the flag"—but first we need allegiance to the principles of "liberty and justice for

all." Congratulations on your courage in getting arrested this weekend to test this crazy law. P.S. Kudos also to the gallery for their courage.

Why is it okay to "knowingly maintain on the ground" homeless *people* but not the "flag"???

I am a German girl. If we Germans would admire our flag as you all do, we would be called Nazis again. I think you do have too much trouble about this flag.

While viewing this exhibit, a 97-year-old man read some thoughts he sent for the occasion—how men have died for this flag and so on. While I can deeply feel his grief for the desecrating he perceives in this exhibit, he also said something very disturbing . . . "If you are an American, you will feel this way too." Patriotism may be expressed in (many) ways. Such a myopic view leads to trouble. As my good friend and champion of the rights of the people (Arthur Kinoy) once said to me, "when fascism comes to America it will be wrapped in the American flag."

Hi, the flag is now folded on the shelf. I have the right to unfold it, but the veterans are here and I'm afraid to. Is it right (is it American?) for me to feel afraid to exercise my rights?

I think it should be burned and gone off this world—age 12

I think the "artist" should be returned to his heritage, i.e., jungles of Africa, and then he can shovel manure in his artistic way.

This flag I'm standing on stands for everything oppressive in this system—The murder of the Indians and all the oppressed around the world, including my brother, who was shot by a pig who kicked his body over to "make sure the nigger was dead." This pig was

wearing the flag. Thank you Dread Scott for this opportunity.

Would it not be reason enough to burn the flag because of the myopic, deadly, and repressive views and actions called for by some of these participants? Or would it not have been reason enough because others still are demanding an end to the very oppression spouted forth by them? (It may even be said that I was answering my own question, the question raised by my art, when I burned the flag at the Capitol, for my own answer may have been, "Burn the sucker. Burn it early, Burn it often. The moment they try to further repress people, burn it in their face, burn it on the steps of their Capitol.")

8. If we had burned the flag in solidarity with the Vietnam vets who 'napalmed' 1001 flags in Seattle one minute after the 'Flag Protection Act' went into effect, that would have been reason enough. Had we burned the flag in solidarity with the thousands of outraged women who demonstrated the day after the repressive *Webster v. Reproductive Health Services* decision, many of whom set the flag ablaze, that would have been reason enough. Had we burned the flag in solidarity with people around the world who know what this empire and its flag really represent, and consequently, target their Yankee oppressor and burn his flag the moment they rebel, that would have been reason enough.

9. It would have been reason enough to roast Ol' Glory because of the 50 million Blacks who were murdered by this state during the times of slavery. It would have been reason enough because of the original *Dred Scott* decision, in which the "democratic and freedom loving" court, in complete accordance with "all men are created equal," ruled that there are no rights that a black man has which a white man is bound to respect. It would have been reason enough that 130 years later, this "land of freedom"

has the highest per capita incarceration rate of anywhere in the world, higher even than South Africa, and the number of incarcerated Blacks per capita is much higher than that of whites. (Will I now add to that statistic?)

10. The rape, pillage and plunder of the Native American people and land, and the country's genocidal arrogance in making a holiday and children's game, not to mention hundred of "westerns," to celebrate that atrocity, would have been reason enough.

11. The fact that: 1 in 4 women is raped in this country; that 40% of homicides against women are by their husbands or lovers; that every 15 seconds a woman is beaten; that this country and its courts are driving women further and further down in a variety of ways, including, but certainly not limited to, the restrictions on abortions, would certainly been reason enough. (We are supposed to let the state and a feudal Christian god control women's bodies and lives?)

12. The country's wars, from Vietnam to Korea, to Nicaragua, to El Salvador, to World War II (yes even WW II), to all the other unnamed wars, police actions, conflicts, etc., designed to maintain and expand the empire, would have been reason enough. The brutal dictatorial regimes which the United States supports politically, militarily, and economically: South Africa, El Salvador, Mexico, Guatemala, Israel, Iran (we haven't forgotten the Shah), Columbia, Peru . . . would have been reason enough. The real and deadly plans and preparations for nuclear war, which have not stopped despite all the 'peace mongering' with Soviet rivals, would be reason enough.

13. The "war on drugs" which is a cover for an escalating war on the people, would have been reason enough. The daily degradation and oppression of Black people and other oppressed minorities: the murder of Yusef Hawkins in Brooklyn for the crime of being in the wrong neighbor-

hood, the murder of Leonard Banister by a pig looking for "drugs" (better to murder him in cold blood than to let him corrupt his life with drugs), Eleanor Bumpers, Michael Stewart, Cedric Saniford and the countless other "faceless" people wasted by this land of liberty. The sweat shops, the ghettos. La Migra. AIDS. Repression. Religion. Hypocrisy. Censorship. Racism. Sexism, capitalism, imperialism, nationalism, patriotism, fascism. All of this is more (much much more) than reason enough to make revolution and end 'the American era,' let alone burn its sacred icon.

14. I am a revolutionary and a proletarian internationalist. Burning the American flag is a statement which is recognized and understood around the world. I, and many others wish to show our solidarity with the people of the world, and consider our political activity here a part of the international struggle against imperialism. It is impossible to fully combat imperialism, particularly U.S. imperialism, while still upholding any shred of Amerika or its holy icon. As the oppressed know, "You can't beat the enemy while still upholding his flag." This alone would be justification for burning many U.S. flags.

15. So yes, I burned the flag. I burned it for all the reasons and to protest all the wrongs listed above and many many more far too numerous to list. Somebody had to do it. This system is totally unacceptable. I burned the flag on the steps of the Capitol two days after the repressive new law went into effect, because the government was too cowardly and politically defeated to arrest me and the hundreds of others who burned the flag one minute after the law went into effect. (After all it doesn't play well on the nightly news to announce that one minute after the land of freedom and democracy passes a new law, the people have passed their verdict — "Fuck the flag and the new law!"). I burned it to say that there is a way to take those

bastards on, that there are many in this country who are opposed to this whole system, and that we don't have to sit silently by as the State further prepares the legal, political, and ideological machinery for fascism. I particularly wanted this message to play loud and clear to young people, who may have been born under this system and its flag, but are looking for ways to ensure that they don't have to die under it. Hopefully many have been inspired by our action on the steps of the Capitol and the seeds of resistance will be magnified a thousand fold in the future.

16. I burned the flag to say, as the popular reggae song goes, referring to the "downpressors," "Deep in my heart I abhor you." Would not that alone have been reason enough?

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Scott W. Tyler  
SCOTT W. TYLER

Dated: 12-1-89

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Criminal Nos. 89-419/420/421JLG

UNITED STATES OF AMERICA

v.

SHAWN E. EICHMAN, ET AL., DEFENDANTS

[Filed: Dec. 5, 1989]

DECLARATION OF GREGORY LEE JOHNSON

Gregory Lee Johnson, hereby declares, under penalty of perjury, as follows:

1. I am a resident of New York, and I was the defendant in *Texas v. Johnson*, 109 S. Ct. 2533 (1989). On October 30, 1989, I knowingly and intentionally set an American flag on fire on the front steps of the U.S. Capitol. I was joined in this act by Shawn Eichman, Dread Scott Tyler and David Blalock, the defendants in this action. The government initially arrested and charged me along with the other three defendants, but chose not to file an information against me.

2. Our action of burning the flag of the United States was done to express unity with the most strongly held convictions and dreams of millions of oppressed people throughout the world. In El Salvador, the oppressed have burned the American flag and an effigy of Uncle Sam because over 70,000 people have been murdered in the last ten years by U.S. trained and equipped death squads and

aerial bombardment of villages by bombs with American flags and "Made in the U.S.A." stenciled on their sides. In Haiti, when the workers who slave in the factories of American imperialism pour into the streets to fight against the junta, they burn the flag of U.S. imperialism, the junta backers. From South Korea to Peru to Palestine to South Africa, Panama, Mexico, Honduras and all over the world one of the first things that happens when oppressed people rise up and they want to make a powerful statement of their hatred and contempt for all the U.S. backed misery and starvation and famine in the world and for all the vicious regimes created and nurtured by U.S. imperialism, one of the first things they do is burn the American flag.

3. I am a member of the Revolutionary Communist Youth Brigade and to us burning the flag is important as a powerful political statement to be made by the oppressed within the borders of the U.S., for whom for millions and millions the American dream has been an American nightmare. This is the flag that flew over the genocide of Native Americans from the 7th Calvary's massacre of the Sioux Indians at Wounded Knee right down to the continued oppression of these people today on the reservation system. This is the flag that flew over the theft of over half of Mexico's land. This is the flag that flew from the sterns of slaveships bringing captive in chains millions of Black people to this country's bloodied shores right down to the modern day oppression of Black people being held captive in the inner city ghettos of the U.S. That is also the depraved history of the American flag.

4. We in the Revolutionary Communist Youth Brigade are gravediggers for imperialism as part of bringing a whole new future into existence that isn't based on exploitation and domination. Our allegiance is not to the

red, white and blue symbol of plunder. Our allegiance is to the oppressed people of the world. To us, burning the American flag is a living expression of proletarian internationalism. We don't respect these borders and divisions imperialism put between us. Burning the American flag is a revolutionary manifesto to the people of the world that here in the U.S., within the belly of the beast, there is a revolutionary people who knows that there is a world imperialist system that is the common enemy of the people whether they reside in the imperialist countries or in the oppressed third world countries. Burning the American flag in the U.S. is a real living part of politically challenging the oppressed here to see the world in a class conscious internationalist outlook, to welcome every defeat and setback suffered by our own rulers, and to politically utilize those defeats to hasten the day when we can not only burn the symbol of the empire, but bring the empire itself down by revolution.

5. Finally I want to say that I believe that we live in a sick and dying empire that is desperately clutching at its symbols. The same Emperor Bush and Congress that has this fascist fascination for the flag and is desperately working to enforce an atmosphere of flag worshipping and patriotic obedience and allegiance are the same oppressors who have a whole reactionary "resurgent America" agenda. An agenda that calls for a resurgence of racists attacks on Black people, outlawing women's right to abortion as part of putting them back in "their place" and building concentration camps for immigrants fleeing American backed starvation and death in Central American and Mexico. It is a sign of the utter desperation and uncertainty of the future that is guiding all of these attacks.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Gregory Lee Johnson  
GREGORY LEE JOHNSON

Dated: 12-1-89

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

No. CR89-315-R

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARK JOHN HAGGERTY, ET AL., DEFENDANTS

[Filed: Jan. 18, 1990]

**MOTION TO DISMISS—ORAL ARGUMENT REQUESTED**

Defendants, Mark John Haggerty, a/k/a Aden Xould, Carlos Garza, Darius Allen Strong, and Jennifer Campbell, hereby jointly move, pursuant to Fed.R. Crim.P. Rule 12(b), to dismiss the information filed against them. The grounds for defendants' motion are set forth in the accompanying memorandum of law.

Dated this 18th day of January, 1990.

Respectfully submitted:

/s/ David Cole by Robert Gombiner  
 DAVID COLE  
 Center for Constitutional Rights  
 666 Broadway—7th Floor  
 New York, New York 10012  
 (212) 614-6464

/s/ Williams Kunstler  
Ronald Kuby by Robert Gombiner  
 WILLIAM KUNSTLER  
 RONALD KUBY  
 13 Gay Street  
 New York, NY 10014  
 (212) 914-5661

/s/ Kevin Peck  
KEVIN PECK  
 1300 Hoge Building  
 705 Second Avenue  
 Seattle, WA 98104  
 (206) 623-2800

/s/ Colin Kippen by Susan R. Kern  
 COLIN KIPPEN  
 614 First Avenue, #300  
 Seattle, WA 98104  
 (206) 622-9050

/s/ Charles S. Hamilton, III  
CHARLES S. HAMILTON, III  
 650 Colman Building  
 811 First Avenue  
 Seattle, WA 98108  
 (206) 624-7364

/s/ Robert Gombiner  
ROBERT GOMBINER  
 Nance, Iaria & Gombiner  
 315 Second Avenue South  
 Seattle, WA 98104  
 (206) 624-2448

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

No. CR89-315-R

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARK JOHN HAGGERTY, ET AL., DEFENDANTS

[Filed: Jan. 18, 1990]

DECLARATION OF MARK HAGGERTY

MARK HAGGERTY, hereby declares, under penalty of perjury, as follows:

1. My name is Mark Haggerty and I am also known as Aden Xould.
2. I gave the following speech at a press conference in front of the United States courthouse in Seattle, on December 1, 1989. The speech states my reasons for burning a flag of the United States.
3. The speech I gave is as follows. My name is Aden, and I am a supporter of the Revolutionary Action Group. I participated in the mass defiance of the unconstitutional and undemocratic flag burning law in order to demonstrate that it is not the constitution and the legal system that defends democratic rights but the struggle of the masses against the legal system of the capitalist state that defends democratic rights.

For example, in the struggle to defend abortion rights it is not the legal system that should be relied on to defend

abortion rights. In fact the Supreme court is in the forefront of undermining these rights. It is the workers and poor that must be mobilized to fight against the ruling class courts and police to defend abortion rights.

The U.S. flag stands not for the people of the U.S. but for the power of the super-rich ruling class as expressed through their government. It does not stand for the workers and poor whose class interests are opposite to that of the rich. For example, the Boeing workers' strike pitted the workers' interest for higher wages and no forced overtime against the company's interests for maximum profits and exhausting overwork. The American flag and the alleged "freedom" it stands for, is, in fact, the freedom of the rich to exploit the workers for maximum profits.

This is the freedom of the "free world." No less hypocritical is the so-called "socialism" of the Soviet Union and East European countries. This so-called socialism stands for the exploitation of the workers there by the government. The workers' interests in the U.S. lie in overthrowing the government of the rich and building socialism. Not the phony socialism of the East Bloc bureaucracies, but real socialism constructed on the power of the working people.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge, information and belief.

/s/ Mark Haggerty

MARK HAGGERTY

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

\_\_\_\_\_  
 No. CR89-315-R

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARK JOHN HAGGERTY, ET AL., DEFENDANTS

\_\_\_\_\_  
 [Filed: Jan. 18, 1990]

\_\_\_\_\_  
 AFFIDAVIT OF JENNIFER PROCTOR CAMPBELL

The undersigned, being first duly sworn on oath, deposes and states:

1. I am a college student at the University of Washington and a defendant in this action.
2. On October 28, 1989, I burned a flag of the United States of America in Seattle, Washington at a demonstration held in response to the leaflet attached to this Affidavit as Exhibit A.
3. My reason for burning the flag of the United States of America was highly political, intentional and designed to make the people of this country wake up and take

notice of what is going on around them. It seems to me that the American public has become too preoccupied with symbols, and, rather than questioning what the flag stands for, instead chooses to march in lockstep behind it, never questioning where we are going, or the effect our national policies have on the homeless, the poor, and those disenfranchised minorities and women, who to this day continue to be the victims of racial and sexual discrimination.

Burning the flag for me is one way to strip off this blindfold of unquestioning allegiance and to cause people to focus on the suffering of people, both at home and abroad, and to thereby move American closer towards everything it is supposed to be.

3. Whenever I look at the flag, I cannot help but picture the spilled blood of American Natives, the enslavement of African-Americans, the internment of Asian-Americans, and the breaking of the treaty of Guadalupe-Hidalgo which previously entitled Chicano-Americans to retain their land and culture.

Rather than demanding admiration and respect, the flag, in my view, cannot be separated from its history, and therefore deserves to be burned.

4. I burned the flag knowing full well that there are those who believe that my patriotism and respect for the flag is something that can be coerced through the passage of a law making it a crime to burn or deface the flag. I do not agree with these people and believe that my view towards the flag is inseparable from my view of America,

and that to prohibit me from burning or defacing the flag  
is the equivalent of legislation how I should feel about this  
country's sordid history.

/s/ Jennifer Proctor Campbell  
JENNIFER PROCTOR CAMPBELL

Dated: 17/1/90

Subscribed and sworn to before me this 17th day of  
January, 1990.

/s/ Susan R. Kern  
Notary Public in and for  
the State of Washington,  
residing at Port Orchard.

# FESTIVAL OF DEFIANCE



Warning! This flyer will be illegal as of Oct. 28th

"Burning a flag

is more of a

symbol of  
freedom than  
the flag itself"

—Stinky Panch  
Maximum Rock and Roll

## • PRESS CONFERENCE : FRIDAY OCT 27 AT NOON

### ■ ROLL ■ THE ■ FLAG ■ FREE ■ DISSENT ■ BURN

On October 28th it becomes illegal to desecrate the flag. This fascist law is not an "exception" to the concept of free speech but an attack on political protest and dissent, and a precedent for the future. Blind patriotism must not be the law of the land. Unlike the flag-kissers, we will not whine, we will Rock & Roll in a Festival of Defiance.

## • FESTIVAL OF DEFiance: FRIDAY NIGHT AT MIDNIGHT

### ■ ROLL ■ THE ■ FLAG ■ FREE ■ DISSENT ■ BURN

On October 28th it becomes illegal to desecrate the flag. This fascist law is not an "exception" to the concept of free speech but an attack on political protest and dissent, and a precedent for the future. Blind patriotism must not be the law of the land. Unlike the flag-kissers, we will not whine, we will Rock & Roll in a Festival of Defiance.

At one minute after midnight, Friday night/Saturday morning, the Festival begins. You know what to do. In front of the post office at Broadway & Denny.



**ANTI-PATRIOTISM IS A DUTY NOT A CRIME**  
**DOWN WITH FASCIST FLAG AMENDMENTS AND LAWS!**

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

\_\_\_\_\_  
 No. CR89-315-R

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARK JOHN HAGGERTY, ET AL., DEFENDANTS

\_\_\_\_\_  
 [Filed: Jan. 18, 1990]

DECLARATION OF DARIUS STRONG

I, DARIUS STRONG, do hereby certify and declare that the following is true and accurate:

1. I am over the age of 18 years and I am competent to testify to the matters set forth below.
2. I am being prosecuted by the Government in the above-captioned matter, a matter which alleges that on October 28, 1989 I committed the crime of violation of Title 18, United States Code, §§ 1361 and 1362 by willfully injuring or committing a depredation against United States property, specifically, a flag of the United States, as well as commission of a crime constituting a violation of Title 18, United States Code §§ 700(a)(1) and (2), a claim that I knowingly burned a flag of the United States.

3. On October 28, 1989, I was involved in a rally and demonstration in front of the United States Post Office located at Broadway and Denny in Seattle. At the rally a number of what looked like American flags were burned. It is claimed that a United States flag belonging to the Post

Office was burned. My involvement in that demonstration was for political purposes. It has been my belief that the flag of the United States is a symbol of certain values commonly held by United States citizens; those values have produced the nation which the flag represents. Among those values is a tolerance of expression of opinion, no matter how extreme or objectionable the expressed opinion may be.

4. My involvement at the demonstration and rally, which is the subject of this prosecution, was consistent with my belief that the burning of a United States flag is an expression of my disagreement with the Government's policy that you cannot burn a flag because a flag is somehow sacred. My involvement also constituted an expression by me that destruction of the flag is an exercise of my right to be free to express objectionable ideas, a right guaranteed to me and to all citizens of the United States by the Constitution of the United States of America. It was my belief in doing what I did that I was communicating the idea that a person's freedom to express an opinion critical of the government is of greater legal and moral value in America than the Government's authority to criminalize acts constituting demonstrations of or expressions of individual beliefs. I believe that flag burning can be quite as fundamentally patriotic as flag waving.

I, Darius Strong, do declare under penalty of perjury under the laws of the United States of America that the matters set forth above are true and accurate.

EXECUTED this 12 day of JANUARY, 1989 at Seattle, Washington.

/s/ Darius Strong  
 DARIUS STRONG

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

\_\_\_\_\_  
 No. CR89-315-R

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARK JOHN HAGGERTY, ET AL., DEFENDANTS

\_\_\_\_\_  
 [Filed: Jan. 18, 1990]

\_\_\_\_\_  
 AFFIDAVIT OF CARLOS GARZA

Carlos Garza being first duty sworn on oath, swears and affirms the following:

1. I burned an American flag on October 28, 1989. That act resulted in my being a defendant in the above-enumerated matter.

2. I am a 32 year old, Mexican-American who was born in Billings, Montana. I moved to the Los Angeles, California area at the age of 4 years old.

3. My formal education consists of having completed the eighth grade in the Los Angeles public school system.

4. I believe 40 to 60 percent of those with whom I attended grammar school are now either dead or in prison. My own brother was killed as a result of gang violence.

5. I spent most of my working hours on jobs in factories or as a gardener. It is almost impossible for Hispanics in America to earn a livable wage.

6. Hispanics in America are very mistreated. Hispanics in America are essentially struggling to survive on a daily basis.

7. American is a beautiful and rich country. There should not be any homeless people on the streets of America.

8. I blame the United States government for the problems of homelessness, hunger and unemployment in our country. I blame the United States government for the fact that 40 to 60 percent of those people I went to grammar school with are either dead or in prison.

9. I burned an American flag to speak out on the problems caused by our government in America. The American flag symbolizes the problems of our country. The American flag was with the United States troops that took the land that belonged to native Americans. While the American flag symbolizes good, it also symbolizes the misdeeds in which our government has participated.

10. The American flag represents the system and the government for which it stands. I love and respect America. I love and respect the America people. I do not love and respect the way Hispanic Americans are treated by the United States government.

11. I burned an American flag to express my outrage over the mistreatment of Hispanic Americans by our government.

12. America is a great country. In America we have the right to freedom of speech and freedom of expression. The day these rights are taken away from us, will be a dark day in American history. When the right to burn a symbol is taken away from American citizens, democracy itself is on the brink of collapse.

13. In an effort to protect and preserve freedom of speech and freedom of expression, I respectfully request

this court to declare the "The Flag Protection Act of 1989" a violation of the First Amendment to Our United States Constitution.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 11 day of January, 1990.

/s/ Carlos Garza

CARLOS GARZA

SIGNED AND SWORN to before me this 11th day of January, 1990 by Carlos Garza.

s/ [illegible]

NOTARY PUBLIC in and for the State of Washington. My Commission expires: 10/10/91

## Supreme Court of the United States

No. 89-1433

UNITED STATES OF AMERICA, APPELLANT

v.

SHAWN D. EICHMAN, ET AL.

No. 89-1434

UNITED STATES OF AMERICA, APPELLANT

v.

MARK JOHN HAGGERTY, ET AL.

The motion of the Solicitor General to expedite consideration of the statements as to jurisdiction is granted. In these cases probable jurisdiction is noted. The cases are consolidated and a total of one hour is allotted for oral argument.

The brief of the Solicitor General is to be filed with the Clerk of the Court and served upon appellees on or before 3:00 p.m., Wednesday, April 18, 1990. The brief(s) of the appellees is to be filed with the Clerk of the Court and served upon the Solicitor General on or before 3:00 p.m., Thursday, May 3, 1990. Any reply brief is to be filed with the Clerk of the Court and served upon appellees on or before 3:00 p.m., Thursday, May 10, 1990. The cases are set for oral argument at 10:00 a.m., Monday, May 14, 1990.

March 30, 1990